

FOR THE MIDDLE DISTRICT OF ALABAMA

Mario Jiminez, # 244576
Petitioner

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VS

LEBRON, P. HA
U.S. DISTRICT
MIDDLE DIST

In Re: Petition For Writ of Habeas
Corpus.

Case No. 3:07-CV-187-MEF

Harvey Grimmer, Warden, et al
Respondents

PETITIONER'S MOTION TO DISMISS THIS HABEAS CORPUS PETITION
WITHOUT PREJUDICE

Comes now Mario Jiminez the Petitioner in the above styled cause by and through the assistance of another inmate, and hereby, pursuant to Rule 11 of the Federal Rules of Habeas Corpus Procedure and Rule 41 (a) of the Federal Rules of Civil Procedure, moves this court for an order dismissing the habeas corpus petition without prejudice to afford the Petitioner an opportunity to return to the Alabama State Courts to exhaust available state remedies, and as grounds, shows as follows:

1. The Alabama Court of Criminal Appeals issued the Certificate of Judgement on direct appeal in this Petitioner's case on November 17th, 2006,
2. The Petitioner knowing nothing about law was misled and deceived by another inmate into believing that his next remedy was to file a Federal Petition For Writ of Habeas Corpus. This particular inmate prepared a habeas corpus petition for the Petitioner, which the Petitioner filed and is the Petition now pending before this court. The Petitioner subsequently

cont:

2. discovered that not only did he file his Federal Habeas Corpus Petition prematurely, but also that the inmate who prepared the petition for the Petitioner presented claims therein which either do not have merit, or have never been fully presented to the Alabama State Courts.
3. The Petitioner currently has an available state remedy by way of a Rule 32 postconviction petition to fully exhaust his state remedies.
4. This Petitioner's current Federal Habeas Corpus Petition/proceeding is currently in the very preliminary stages in view of the fact that the Honorable Terry F. Moorer, United States Magistrate, just caused the Respondents to be served with a copy of the petition and order to show cause on the 8th day of March, 2007. The interests of justice, judicial economy and fundamental fairness clearly justifies this court granting the Petitioner's request to dismiss his habeas corpus petition WITHOUT PREJUDICE at this stage so as to allow the Petitioner to exhaust his available state remedies so as to meet the exhaustion requirements of 28 U.S.C. § 2254.
5. This Petitioner recently filed a motion in this court requesting that this proceeding be stayed, or in the alternative, be placed on hold pending his exhaustion of state remedies. Magistrate Moorer denied said motion on March 29th, 2007 stating that, "Granting Petitioner's request would require ignoring the clear intent of Congress in enacting the limitations periods in the Anti-Terrorism and Effective Death Penalty Act of 1996." Therefore, the Petitioner is of the opinion that the appropriate measure at this time would be to request that this court dismiss his habeas corpus petition WITHOUT PREJUDICE so that he may return to the State Courts and fully exhaust his state remedies and return to the federal courts to file a proper habeas corpus petition at a later date in the event the state courts refuse to correct the injustice in this Petitioner's

case.

RELIEF REQUESTED

Wherefore, all facts and circumstances considered, the Petitioner respectfully requests that this Court issue orders dismissing this habeas corpus petition/proceeding without prejudice to allow the Petitioner to exhaust his state remedies.

Done this the 3rd day of April, 2007

Respectfully Submitted,

Mario Jimenez 4-3-07

Mario Jimenez - AZS # 244571 - Petitioner

Dorm B-1 Bed #3

W.C.D.C. P.O. Box 307

Epps, Louisiana 71237

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 3rd day of April, 2007 served a copy of the foregoing upon the Clerk of the U.S. District Court for the Middle District of Alabama - P.O. Box 711 Montgomery, Ala. 36101-0711 and upon:

The Office of the Alabama Attorney General - 11 South Union
Street - Montgomery, Alabama 36130-0152,

by placing copies of the same in the U.S. Mail properly addressed postage prepaid at the West Carroll Detention Center in Epps, Louisiana.

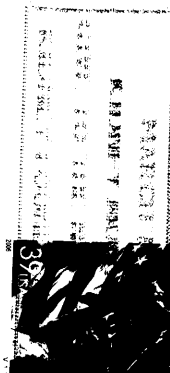
Respectfully Submitted,

Mario Jimenez 4-3-07

Mario Jimenez - Petitioner Pro se

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